Noakes v. *Rice*, would not prevent the mortgagor from being equally able to redeem at any time, nor compel him upon payment of principal, interest and costs to take back the property mortgaged in a different condition from that in which he parted with it—subject to a "tie."

EMINENT DOMAIN—RIGHTS UNDER RESTRICTIONS IN DEEDS.—The rights of the Federal government under its powers of eminent domain have received further definition in the case of *The United States* v. *Certain Lands in Town of Jamestown* (R. I. 1902) 112 Fed. 622. Lots of land were conveyed by deeds containing restrictions as to their use. The government condemned some of these lots for the purpose of fortification. An adjoining owner who was thus deprived of his rights under the restrictions in the deeds of the land condemned by the government claimed compensation on the ground that his property had been taken. The court denied his claim and based its opinion on the theory that the deeds in question contemplated only such offensive businesses as were carried on by individuals. Assuming that the restrictions were meant to include governmental uses, however, the court declared them contrary to public policy and asserted that there can be no "property right whatever, springing from private grant, that the lands of another shall not be used for necessary governmental purposes." The influence of public policy in determining the rights of the government as against individuals is materially increased by this decision.

The particular aspect of the doctrine presented by the principal case is unusual. Somewhat analogous cases may be found in the right of the government to erect dams in order to improve navigation, without making compensation to damaged fishery interests. *Shrunk* v. *Schuylkill Navigation Co.* (1826) 14 S. and R. 71. The same rule governs the improvement of navigation by bulkheads, *Slingerland* v. *International Contracting Co.* (N. Y. 1901) 61 N. E. 905; 2 COLUMBIA LAW REVIEW, 266; the deepening of a river channel, although causing the destruction of a spring, *Commonwealth* v. *Richter* (1845) 1 Pa. St. 467; the straightening of a river, *Green* v. *State* (1887) 73 Cal. 29. But see *Pumpelly* v. *Green Bay, &c., Co.*, (1871) 13 Wall. 166. The construction of a bridge across a navigable stream, while injuriously affecting private interests, may also be *damnum absque injuria*, *Davidson* v. *Boston and Me. R. R. Co.* (1849) 3 Cush. 91. So also a tunnel under the Chicago River, *Transportation Co.* v. *Chicago* (1878) 99 U. S. 635. The grade of city streets may sometimes be changed with consequential damage to value of adjacent lots and no rights result against the city. Where compensation is given, it is generally purely statutory. The Ohio doctrine is exceptional. *Crawford* v. *Delaware* (1857) 7 Ohio St. 459. 1 Lewis, Eminent Domain, 199, 201, 202, 205, and cases there cited.

Fortified as the doctrine is by these authorities, it is not unquestioned. An excellent discussion may be found in *Eaton* v. *Boston, C. and M. R. R. Co.* (1872) 51 N. H. 504. That property

be actually taken, in the physical sense, is no longer necessary. Sedgwick, Const. Law, 2nd ed., 462, 463; 1 Lewis, Eminent Domain 61. It is as unfair to decide the principal case on the assumption that the original grantees of the land made the restrictions solely with a view to acquiring property rights against the government as it is to assume that they had in view the prohibition of offensive businesses carried on only by private individuals. Their real object was to prevent occupations injurious to their use of the land. Rights under restrictions as to the height of buildings have been compensated. *Ladd* v. *Boston* (1890) 151 Mass. 588. The principal case appears to present a rather close analogy. See also 1 COLUMBIA LAW REVIEW, 121, 551.

AGENCY CLAUSES IN INSURANCE POLICIES.—The attempts of insurance companies to negative the effect of decisions holding that they have constructive knowledge of facts known to their agents, have resulted in a wealth of conflicting cases. The courts have looked with much disfavor on the purpose of the insurer to avoid responsibility for his agent's acts, and this has opened a field for judicial legislation. See *Partridge* v. *Ins. Co.* (1879) 17 Hun, 95. The New York cases are interesting. In *Rohrback* v. *Germania Fire Ins. Co.* (1875) 62 N. Y. 47, it was stipulated in the application that "any person other than the assured who may have procured this insurance to be taken by this company shall be deemed the agent of the assured." The assured's true statements were incorrectly written down by the soliciting agent but the agency clause was held to free the company of liability. This was affirmed in *Alexander* v. *Germania Fire Ins. Co.* (1876) 66 N. Y. 464. The next case in point of time was *Sprague* v. *Holland Purchase Ins. Co.* (1877) 69 N. Y. 128, where the policy contained the same agency clause as well as a condition that the application must be made out by the insurer's authorized agent. These clauses were held inconsistent. In *Whitehead* v. *Ins. Co.* (1879) 76 N. Y. 415, the doctrine of the Rohrback case was confined to acts of the agent in connection with the original application. A recent decision of the Court of Appeals seems on principle to have overruled the theory of this line of decisions. *Sternaman* v. *Metropolitan Life Ins. Co.* (1902) 62 N. E. 762. A medical examiner, whose acts were assumed by the assured in the application, and who, it was agreed, should be deemed the agent of the assured, not of the insurer, made false entries to correct answers. It was held that such statements could be shown by parol to bind the company, since the agreement did not change the fact that the examiner was the agent of the insurer, and on grounds of public policy the company should be bound by the agent's acts. The former cases, cited above, are distinguished as involving only solicitors or brokers of insurance. This view seems open to criticism in that, on the basis of the principal case, the fact of the agency relation between solicitor and the insurer should have been in issue in each instance. Though the solicitor may be the agent of the assured, if it can be shown that he was acting for the company, the rule of the principal case should hold.